



# GENERAL ASSEMBLY

## COMMONWEALTH OF KENTUCKY

### 2009 REGULAR SESSION

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HOUSE BILL NO. 106

CORRECTED

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FRIDAY, FEBRUARY 6, 2009

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The following bill was reported to the Senate from the House and ordered to be printed.

RECEIVED AND FILED  
DATE March 27, 2009  
2:15pm  
\_\_\_\_\_  
TREY GRAYSON  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY R. Heller

AN ACT relating to mortgages.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔ Section 1. KRS 286.8-010 is amended to read as follows:

As used in this subtitle, unless the context otherwise requires:

(1) "Affiliate" means any person who directly or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with another person;

(2) "Office" means the Office of Financial Institutions;

(3) "Executive director" means the executive director of the office;

(4) "Applicant" means a person filing an application or renewal application for a license, registration, or claim of exemption under this subtitle;

(5) "Borrower" means any person that seeks, applies for, or obtains a mortgage loan;

(6) "Branch" or "branches" means any location other than the mortgage loan company's or mortgage loan broker's principal location where the mortgage loan company, mortgage loan broker, or its employees maintain a physical presence for the purpose of conducting business in the mortgage lending process, including the servicing of mortgage loans;

(7) "Classroom" means a physical classroom environment in which teachers and participants are physically present for the teaching of a course. Courses taught through Internet, mail, or correspondence classes shall not be considered to be courses taught in a classroom;

(8) "Clerical or support duties" mean administrative functions such as gathering information, requesting information, word processing, sending correspondence, or assembling files, and may include:

(a) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; or

- 1        (b) Any communication with a borrower to obtain the information necessary  
 2        for the processing or underwriting of a loan, to the extent that such  
 3        communication does not include taking a residential mortgage loan  
 4        application, offering or negotiating loan rates or terms, or counseling  
 5        consumers about residential mortgage loan rates or terms;
- 6        (9) "Control" means the power, directly or indirectly, to direct the management or  
 7        policies of a company, whether through ownership of securities, by contract, or  
 8        otherwise;
- 9        (10) "Control records" mean all records relating to the operation of a branch that are  
 10        necessary to exercise control and supervision over the branch;
- 11       (11) "Criminal syndicate" means five (5) or more persons collaborating to promote or  
 12       engage in any pattern of residential mortgage fraud on a continuing basis;
- 13       (12) "Depository institution" means a depository institution as defined in the Federal  
 14       Deposit Insurance Act, 12 U.S.C. sec. 1813(c), and amendments thereto, and  
 15       includes any credit union;
- 16       (13) "Employ or use" means to employ, utilize, or contract with a person or the  
 17       person's employees for the purpose of participating in the mortgage lending  
 18       process, including the servicing of mortgage loans;
- 19       (14) "Immediate family member" means a spouse, child, sibling, parent, grandparent,  
 20       or grandchild;
- 21       (15) "Licensee" means a person to whom a license has been issued;
- 22       (16) "Managing principal" means a natural person who meets the requirements of  
 23       subsection (6) of Section 5 of this Act and who agrees to actively participate in  
 24       and be primarily responsible for the operations of a licensed mortgage loan  
 25       broker;
- 26       (17) "Mortgage lending process" means the process through which a person seeks or  
 27       obtains a mortgage loan, including the solicitation, application, origination,

1 negotiation of terms, processing, underwriting, signing, closing, and funding of a  
 2 mortgage loan and the services provided incident to a mortgage loan, including  
 3 the appraisal of the residential real property. Documents involved in the  
 4 mortgage lending process include but are not limited to:

5 (a) Uniform residential loan applications or other loan applications;

6 (b) Appraisal reports;

7 (c) Settlement statements;

8 (d) Supporting personal documentation for loan applications, including:

9 1. Form W-2 or other earnings or income statements;

10 2. Verifications of rent, income, and employment;

11 3. Bank statements;

12 4. Tax returns; and

13 5. Payroll stubs;

14 (e) Any required mortgage-related disclosures; and

15 (f) Any other document required as a part of, or necessary to, the mortgage  
 16 lending process;

17 (18)[(4)] "Mortgage loan" means any loan primarily for personal, family, or  
 18 household use that is secured by a mortgage, ~~or~~ deed of trust, or other equivalent  
 19 consensual security interest on residential real property or any loan primarily for  
 20 personal, family, or household use that is secured by collateral that has a mortgage  
 21 lien interest in residential real property;

22 (19) "Mortgage loan broker" means any person who for compensation or gain, or in  
 23 the expectation of compensation or other gain, received directly or indirectly,  
 24 serves as an agent for any borrower in an attempt to obtain a mortgage loan, or  
 25 holds oneself out as being able to do so;

26 (20) "Mortgage loan company" means any person who directly or indirectly:

27 (a) Makes, purchases, or sells mortgage loans, or holds oneself out as being

1           able to do so; or

2           (b) Services mortgage loans, or holds oneself out as being able to do so;

3           (21) "Mortgage loan originator" means a natural person who, in exchange for  
 4           compensation or gain or in the expectation of compensation or gain:

5           (a) Performs any one (1) or more of the following acts in the mortgage lending  
 6           process:

7           1. Solicits, places, negotiates, or offers to make a mortgage loan;

8           2. Obtains personal and financial information from a borrower or  
 9           prospective borrower;

10          3. Assists a borrower or prospective borrower with the preparation of a  
 11          mortgage loan or related documents;

12          4. Explains, recommends, discusses, negotiates, or quotes rates, terms,  
 13          and conditions of a mortgage loan with a borrower or prospective  
 14          borrower, whether or not the borrower or prospective borrower makes  
 15          or completes an application;

16          5. Explains any term or aspect of any disclosure or agreement given at or  
 17          after the time a mortgage loan application is received; or

18          6. Takes a residential mortgage loan application; or

19          (b) Is an independent contractor engaging in the mortgage lending process as a  
 20          mortgage loan processor;

21          (22) "Mortgage loan processor" means a natural person who performs only clerical  
 22          or support duties at the direction of and subject to the supervision and instruction  
 23          of a mortgage loan originator;

24          (23) "Nationwide Mortgage Licensing System and Registry" means a mortgage  
 25          licensing system developed and maintained by the Conference of State Bank  
 26          Supervisors and the American Association of Residential Mortgage Regulators;

27          (24) "Originate" means to solicit, place, negotiate, offer to make, or broker a

1 mortgage loan;

2 (25) "Pattern of residential mortgage fraud" means residential mortgage fraud that  
 3 involves two (2) or more mortgage loans that have the same or similar intents,  
 4 results, accomplices, victims, or methods of commission or otherwise are  
 5 interrelated by distinguishing characteristics;

6 (26) "Person" means a natural person, or any type or form of corporation, company,  
 7 partnership, proprietorship, or association;

8 (27) "Physical location" means any location where the mortgage lending process,  
 9 including the servicing of mortgage loans, is conducted;

10 (28) "Record" means any books of account or other books, papers, journals, ledgers,  
 11 statements, instruments, documents, files, messages, writings, correspondence, or  
 12 other internal data or information, made or received in the regular course of  
 13 business or otherwise, regardless of the mode in which it is recorded;

14 (29) "Registrant" means a person to whom a certificate of registration has been  
 15 issued;

16 (30) "Residential mortgage loan application" means the submission of a borrower's  
 17 financial information in anticipation of a credit decision, whether written or  
 18 computer-generated, relating to a mortgage loan;

19 (31)[(5)] "Residential real property" means a dwelling as defined in the Federal Truth  
 20 in Lending Act, 15 U.S.C. sec. 1602(v), or any real property upon which is  
 21 constructed or intended to be constructed a dwelling as so defined~~[any single-~~  
 22 ~~family residence or multiple dwelling structure containing four (4) or fewer single~~  
 23 ~~dwelling units for four (4) or fewer family units living independently of each other;~~  
 24 ~~or any single family condominium unit; or any single family cooperative];~~

25 (32) "Service or servicing" means:

26 (a) Receiving any scheduled periodic mortgage loan payments from a borrower,  
 27 including amounts for escrow accounts or other fees or obligations related

1 to the mortgage loan, and making or crediting the payments to the mortgage  
 2 loan account, owner of the loan, or a third party assigned to receive said  
 3 payments;

4 (b) Maintaining accountings of principal, interest, and other accounts  
 5 associated with the servicing of mortgage loans and responding to borrower  
 6 inquiries regarding the status of these loans or accounts;

7 (c) Initiating, supervising, or conducting foreclosure proceedings and property  
 8 dispositions in the case of default, except this shall not include licensed  
 9 attorneys representing clients in such matters; or

10 (d) In the case of a home equity conversion mortgage or reverse mortgage,  
 11 making payments to the borrower;

12 (33) "Takes a residential mortgage loan application" means:

13 (a) Recording the borrower's application information in any form for use in a  
 14 credit decision; or

15 (b) Receiving the borrower's application information in any form for use in a  
 16 credit decision;

17 (34) "Transact or transacting business in Kentucky" means to participate in any  
 18 meaningful way in the mortgage lending process, including the servicing of  
 19 mortgage loans, with respect to any residential real property located in Kentucky;

20 (35) "Unique identifier" means a number or other identifier assigned by protocols  
 21 established by the Nationwide Mortgage Licensing System and Registry; and

22 (36) "Wholly owned subsidiary" means a subsidiary that is entirely owned or  
 23 controlled by another person.

24 ~~[(6) "Person" means an individual, a corporation, a partnership, an association, a joint-~~  
 25 ~~stock company, a trust where the interest of the beneficiaries is evidenced by a~~  
 26 ~~security, an unincorporated organization, a government, a political subdivision of a~~  
 27 ~~government, or any other group however organized;~~

1 ~~(7) "Mortgage loan company" means any person who directly or indirectly:~~

2 ~~(a) Holds himself out as being able to make or purchase loans secured by~~  
 3 ~~mortgages on residential real property;~~

4 ~~(b) Holds himself out as being able to service loans secured by mortgages on~~  
 5 ~~residential real property; or~~

6 ~~(c) Holds himself out as being able to buy or sell notes secured by mortgages on~~  
 7 ~~residential real property;~~

8 ~~(8) "Mortgage loan broker" means any person who for compensation or gain, or in the~~  
 9 ~~expectation of compensation or other gain, received directly or indirectly, holds~~  
 10 ~~himself out as being able to serve as an agent for any person in an attempt to obtain~~  
 11 ~~a loan that will be secured by a mortgage on residential real property;~~

12 ~~(9) "Mortgage loan originator" means an individual who:~~

13 ~~(a) Provides services to one (1) and not more than one (1) mortgage loan~~  
 14 ~~company or mortgage loan broker;~~

15 ~~(b) Is subject to the supervision and control of that mortgage loan company or~~  
 16 ~~mortgage loan broker; and~~

17 ~~(c) In exchange for compensation by that mortgage loan company or mortgage~~  
 18 ~~loan broker, performs any one (1) or more of the following acts in the~~  
 19 ~~mortgage lending process:~~

20 ~~1. Solicits, places, negotiates, originates, or offers to make a mortgage loan~~  
 21 ~~for a mortgage loan company or mortgage loan broker;~~

22 ~~2. Obtains personal and financial information from a borrower or~~  
 23 ~~prospective borrower;~~

24 ~~3. Assists a borrower or prospective borrower with the preparation of a~~  
 25 ~~mortgage loan or related documents;~~

26 ~~4. Explains, recommends, discusses, or quotes rates, terms, and conditions~~  
 27 ~~of a mortgage loan with a borrower or prospective borrower, whether or~~



1                   ~~not the borrower or prospective borrower makes or completes an~~  
 2                   ~~application; or~~

3                   ~~5. Explains any term or aspect of any disclosure or agreement given at or~~  
 4                   ~~after the time a mortgage loan application is received;~~

5   ~~(10) "Mortgage loan processor" means an individual who works under the instruction of~~  
 6       ~~a mortgage loan originator and performs only clerical functions such as gathering~~  
 7       ~~information, requesting information, word processing, sending correspondence, or~~  
 8       ~~assembling files, and may or may not perform any of the duties or responsibilities of~~  
 9       ~~a mortgage loan originator in the mortgage loan lending process;~~

10 ~~(11) "Classroom" means a physical classroom environment in which teachers and~~  
 11 ~~participants are physically present for the teaching of a course. Courses taught~~  
 12 ~~through Internet, mail, or correspondence classes shall not be considered to be~~  
 13 ~~courses taught in a classroom;~~

14 ~~(12) "Mortgage lending process" means the process through which a person seeks or~~  
 15 ~~obtains a mortgage loan, including the solicitation, application, origination,~~  
 16 ~~negotiation of terms, underwriting, signing, closing, and funding of a mortgage loan~~  
 17 ~~and the services provided incident to a mortgage loan, including the appraisal of the~~  
 18 ~~residential real property. Documents involved in the mortgage lending process~~  
 19 ~~include but are not limited to:~~

20 ~~(a) Uniform residential loan applications or other loan applications;~~

21 ~~(b) Appraisal reports;~~

22 ~~(c) Settlement statements;~~

23 ~~(d) Supporting personal documentation for loan applications, including:~~

24                   ~~1. Form W-2 or other earnings or income statements;~~

25                   ~~2. Verifications of rent, income, and employment;~~

26                   ~~3. Bank statements;~~

27                   ~~4. Tax returns; and~~

1           ~~5. Payroll stubs;~~

2           ~~(e) Any required mortgage-related disclosures; and~~

3           ~~(f) Any other document required as a part of, or necessary to, the mortgage~~  
4           ~~lending process;~~

5           ~~(13) "Pattern of residential mortgage fraud" means residential mortgage fraud that~~  
6           ~~involves two (2) or more mortgage loans that have the same or similar intents,~~  
7           ~~results, accomplices, victims, or methods of commission or otherwise are~~  
8           ~~interrelated by distinguishing characteristics;~~

9           ~~(14) "Branch" or "branches" means any location other than the mortgage loan company's~~  
10           ~~or mortgage loan broker's principal location where the mortgage loan company,~~  
11           ~~mortgage loan broker, or its employees maintain a physical presence for the purpose~~  
12           ~~of conducting business in the mortgage lending process in which the property~~  
13           ~~subject to the mortgage loan process is residential real property located in~~  
14           ~~Kentucky;~~

15           ~~(15) "Registrant" means a person to whom a certificate of registration has been issued;~~

16           ~~(16) "Licensee" means a person to whom a license has been issued;~~

17           ~~(17) "Criminal syndicate" means five (5) or more persons collaborating to promote or~~  
18           ~~engage in any pattern of residential mortgage fraud on a continuing basis;~~

19           ~~(18) "Physical location" means any location where the mortgage lending process is~~  
20           ~~conducted. The physical location where the mortgage lending process is conducted~~  
21           ~~shall have a street address. A post office box or similar designation shall not meet~~  
22           ~~the requirements of this subsection. The physical location shall be accessible to the~~  
23           ~~general public as a place of business, unless the physical location is a residence and~~  
24           ~~proof of residence has been submitted as required by KRS 286.8-032(8); and~~

25           ~~(19) "Applicant" means a person filing an application or renewal application for a~~  
26           ~~license, registration, or claim of exemption under this subtitle.]~~

27           ➔ Section 2. KRS 286.8-020 is amended to read as follows:

1 (1) The following mortgage loan companies and mortgage loan brokers shall be  
 2 subject to KRS 286.8-180, Section 8 of this Act, subsection (1) of Section 14 of  
 3 this Act, and subsections (12), (13), and (14) of this section, but shall be exempt  
 4 from all other provisions of this subtitle:

5 (a) Any person duly licensed, chartered, ~~and~~~~or~~ otherwise subject to regular  
 6 examination at least once every two (2) years by a state or federal financial  
 7 institution regulatory agency under the laws of this state or any other state or  
 8 the United States as a bank, bank holding company, trust company, credit  
 9 union, savings and loan association, savings and loan association holding  
 10 company, service corporation subsidiary of a savings and loan association,  
 11 insurance company, real estate investment trust as defined in 26 U.S.C. sec.  
 12 856, an institution of the farm credit system organized under the Farm Credit  
 13 Act of 1971 as amended, or any wholly owned subsidiary of any such person  
 14 if the subsidiary is subject to regular examination at least once every two (2)  
 15 years by a state or federal financial institution regulatory agency~~[- Any~~  
 16 ~~mortgage loan originator or mortgage loan processor employed by any such~~  
 17 ~~person, or by a wholly owned subsidiary of any person listed in this paragraph,~~  
 18 ~~shall also be exempt];~~

19 (b) Any natural person who makes a mortgage loan secured by a dwelling that  
 20 served as the natural person's residence, unless the natural person is  
 21 compensated in connection with that transaction by a mortgage loan  
 22 company, mortgage loan broker, or other mortgage loan originator, or by  
 23 an agent of such company, broker, or other originator~~[An attorney at law~~  
 24 ~~licensed to practice law in Kentucky who is not principally engaged in the~~  
 25 ~~business of negotiating mortgage loans, when the person renders services in~~  
 26 ~~the course of his practice as an attorney at law];~~

27 (c) Any natural person who makes a mortgage loan to an immediate family

member of the natural person unless the natural person is compensated in connection with that transaction by a mortgage loan company, mortgage loan broker, or other mortgage loan originator, or by an agent of such company, broker, or other originator~~[person doing any act under order of any court];~~

- (d) The United States of America; the Commonwealth of Kentucky; any other state, district, territory, commonwealth, or possession of the United States of America; any city, county, or other political subdivision; and any agency, division, or corporate instrumentality of any of the foregoing;
- (e) The Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA);
- (f) Any mortgage loan company or mortgage loan broker making or brokering a mortgage loan involving housing initially transferred by certificate of title under KRS Chapter 186A;
- (g) A consumer loan or finance company or an industrial loan company licensed under Subtitle 4 or 7 of this chapter whose primary business is originating consumer or industrial loans as provided under Subtitle 4 or 7 of this chapter or~~;~~ any wholly owned subsidiary of such a consumer loan or finance company or an industrial loan company~~;~~ ~~any mortgage loan broker, loan officer, originator, or loan processor employed by any such person; or by a wholly owned subsidiary of any such consumer loan or finance company or an industrial loan company~~, except that they shall be subject to the prohibited acts of KRS 286.8-220(2)(e) and (f) and 286.8-110(4); and
- (h) A nonprofit organization that is recognized as tax-exempt under 26 U.S.C. sec. 501(c)(3) and authorized to do business in this Commonwealth, and that has affordable housing as a primary purpose in its operations.~~[Any mortgage~~

1           ~~loan originator or mortgage loan processor who is an employee of a mortgage~~  
 2           ~~loan company, mortgage loan broker, or nonprofit organization shall be~~  
 3           ~~subject to the provisions of KRS 286.8-255 and 286.8-260.]~~

4       (2) The following shall ~~comply with all provisions of this subtitle but shall~~ be exempt  
 5       from the licensing ~~and examination~~ provisions of this subtitle, *the examination*  
 6       *provisions of Section 12 of this Act and KRS 286.8-180, unless it appears on*  
 7       *grounds satisfactory to the executive director that an examination is necessary,*  
 8       *but shall otherwise be subject to all other provisions of this subtitle:*~~[- The~~  
 9       following shall be subject to the examination provisions of KRS 286.8-170(4) and  
 10       (5) and 286.8-180, if it appears on grounds satisfactory to the executive director that  
 11       an examination is necessary. Any mortgage loan originator or mortgage loan  
 12       processor who is an employee of the following shall be subject to KRS 286.8-255  
 13       and 286.8-260.]

14       (a) A mortgage loan company or mortgage loan broker approved and regulated by  
 15       the United States Department of Housing and Urban Development to perform  
 16       business in this Commonwealth; and

17       (b) Any branch of a mortgage loan company or mortgage loan broker listed in  
 18       paragraph (a) of this subsection, provided the branch is approved and  
 19       regulated by the United States Department of Housing and Urban  
 20       Development to perform business in this Commonwealth.

21       (3) Any nonprofit organization, mortgage loan company, mortgage loan broker, or  
 22       branch thereof relying upon an exemption under subsection (1)(h) or (2)(a) or (b) of  
 23       this section shall file with the executive director a written application for a claim of  
 24       exemption. The executive director shall approve an application for an exemption  
 25       that is timely filed and meets the requirements of this subtitle. The period of  
 26       exemption shall be from January 1 through December 31, and the exemption shall  
 27       expire on December 31 of the same calendar year. Every person granted an

1 exemption under this section shall file a written application for a new exemption on  
 2 an annual basis. The application shall be received by the executive director on or  
 3 before December 31 of the same calendar year. A written application for a partial-  
 4 year exemption shall also expire on December 31 of the same calendar year that the  
 5 written application for an exemption is granted.

6 (4) Any mortgage loan company, mortgage loan broker, or branch thereof relying upon  
 7 an exemption under subsection (2)(a) or (b) of this section shall fund or broker a  
 8 minimum of twelve (12) Federal Housing Administration-insured loans on  
 9 Kentucky residential real properties each year in order to maintain its exemption.

10 (5) Any mortgage loan company, mortgage loan broker, or branch thereof relying upon  
 11 an exemption under subsection (2)(a) or (b) of this section who ceases to be  
 12 approved or regulated by the Department of Housing and Urban Development shall  
 13 notify the executive director, in writing, within ten (10) days after it ceases to be  
 14 regulated by the United States Department of Housing and Urban Development.

15 (6) Any person listed in subsection (1)(a), (b), (c), (d), (e), (f), or (g) of this section  
 16 shall not be required to file with the executive director a claim of exemption.

17 (7) (a) Any natural person making a loan under subsection (10) of this section shall  
 18 make the following disclosure, on a separate sheet of paper in minimum  
 19 eighteen (18) point type, to the borrower:

20 DISCLOSURE

21 (Name and address of lender) is not licensed or regulated by the Kentucky  
 22 Office of Financial Institutions.

23 (Name of lender) is making this mortgage loan with his or her own funds, for  
 24 the person's own investment, without intent to resell the mortgage loan.

25 (The phone number and address of the Kentucky Office of Financial  
 26 Institutions.)

27 (b) A copy of the disclosure, signed by the borrower, shall be maintained by the

1 natural person for a period not to exceed three (3) years after the date the  
2 mortgage loan is paid in full.

3 (8) Any mortgage loan company, mortgage loan broker, or branch thereof relying upon  
4 an exemption under subsection (2)(a) or (b) of this section shall provide a list of  
5 funded or brokered Federal Housing Administration-insured loans from December  
6 1 of the previous calendar year to November 30 of the current~~for the previous~~  
7 calendar year to the executive director by December 31 of each year on a form  
8 prescribed by the executive director.

9 (9) Any mortgage loan company, mortgage loan broker, or branch thereof applying for  
10 an exemption under subsection (2)(a) or (b) of this section shall not be approved for  
11 an exemption under subsection (2)(a) or (b) of this section unless the mortgage loan  
12 company, mortgage loan broker, or branch thereof has:

13 (a) Held a mortgage loan company or mortgage loan broker license or registration  
14 for five (5) consecutive years prior to the filing of the application for an  
15 exemption under this section with the executive director; or

16 (b) Been approved and regulated by the United States Housing and Urban  
17 Development to conduct business in the mortgage lending process for five (5)  
18 consecutive years prior to the filing of the application for an exemption under  
19 this section with the executive director.

20 (10) Any natural person not exempted in subsection (1)(b) or (1)(c) of this section who  
21 makes~~making~~ a mortgage loan with his or her own funds for the person's  
22 investment without the intent to resell the mortgage loan shall be exempt from the  
23 provisions of this subtitle except for the following:

24 (a) Examination provisions of KRS 286.8-170 and 286.8-180 when it appears on  
25 grounds satisfactory to the executive director that an examination is necessary;

26 (b) Disclosure requirements of subsection (7) of this section;

27 (c) Any investigation and enforcement provisions of this subtitle including KRS

286.8-170(6), and KRS 286.8-046, 286.8-090, 286.8-190, and 286.8-990;

(d) Prohibited acts under KRS 286.8-125 and 286.8-220; and

(e) Registration and regulatory requirements of~~Any mortgage loan originator or mortgage loan processor who is an employee of a natural person exempted under this subsection shall be subject to~~ KRS 286.8-255 ~~and 286.8-260~~.

(11) No person shall hold both a claim of exemption and a license granted under this subtitle.

(12) Notwithstanding any provisions to the contrary set forth in this subtitle, every mortgage loan company and mortgage loan broker shall make available and grant access to the executive director or an examiner of the executive director the records in its possession or control that are subject to the provisions of this subtitle.

(13) Notwithstanding any provisions to the contrary set forth in this subtitle, no mortgage loan company or mortgage loan broker shall impede the executive director or an examiner of the executive director from interviewing any person regarding any potential violations of this subtitle.

(14) Notwithstanding any provisions to the contrary set forth in this subtitle, every mortgage loan company and mortgage loan broker that employs or utilizes the direct services of a mortgage loan originator subject to the registration and regulatory requirements of Section 18 of this Act shall complete and timely submit to the Nationwide Mortgage Licensing System and Registry an annual report of condition, which shall be in such form and contain such information as the Nationwide Mortgage Licensing System and Registry may require, along with any other information which may be required by the executive director.

➔SECTION 3. A NEW SECTION OF SUBTITLE 8 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

(1) The following mortgage loan originators shall be subject to subsections (3) and



1 (4) of this section, but shall be exempt from the registration and regulatory  
 2 requirements of Section 18 of this Act:

3 (a) An individual employed by the following institutions and acting on behalf of  
 4 such institutions;

5 1. A depository institution;

6 2. A subsidiary that is:

7 a. Owned and controlled by a depository institution; and

8 b. Regulated by the Board of Governors of the Federal Reserve  
 9 System, the Comptroller of the Currency, the Director of the  
 10 Office of Thrift Supervision, the National Credit Union  
 11 Administration, or the Federal Deposit Insurance Corporation;

12 or

13 3. An institution regulated by the Farm Credit Administration;

14 (b) A licensed attorney who negotiates the terms of a mortgage loan on behalf  
 15 of a client as an ancillary matter to the attorney's representation of the  
 16 client, unless the attorney is compensated by a mortgage loan company,  
 17 mortgage loan broker, or other mortgage loan originator, or by an agent of  
 18 such company, broker, or other originator;

19 (c) A natural person who originates a mortgage loan on behalf of an  
 20 immediate family member of the natural person unless the natural person is  
 21 compensated in connection with that transaction by a mortgage loan  
 22 company, mortgage loan broker, or other mortgage loan originator, or by  
 23 an agent of such company, broker, or other originator; and

24 (d) A natural person who originates a mortgage loan secured by a dwelling that  
 25 served as the natural person's residence unless the natural person is  
 26 compensated in connection with that transaction by a mortgage loan  
 27 company, mortgage loan broker, or other mortgage loan originator, or by

1 an agent of such company, broker, or other originator.

2 (2) The following mortgage loan processors shall be subject to subsections (3) and  
 3 (4) of this section, but shall be exempt from the registration and regulatory  
 4 requirements of Section 18 of this Act:

5 (a) Any natural person exempted in subsection (1) of this section; and

6 (b) Any natural person employed by a person exempted in subsections  
 7 (1)(a),(b),(c),(d),(e), (f) or (g) of Section 2 of this Act and acting on behalf of  
 8 such person.

9 (3) Notwithstanding any provisions to the contrary set forth in this subtitle, no  
 10 mortgage loan originator or mortgage loan processor shall impede the executive  
 11 director or an examiner of the executive director from interviewing any person  
 12 regarding any potential violations of this subtitle.

13 (4) Notwithstanding any provisions to the contrary set forth in this subtitle, every  
 14 mortgage loan originator and mortgage loan processor shall make available and  
 15 grant access to the executive director or an examiner of the executive director the  
 16 records in the originator's or processor's possession or control that are subject to  
 17 the provisions of this subtitle.

18 ➔Section 4. KRS 286.8-030 is amended to read as follows:

19 (1) (a) It is unlawful for any person to transact business in Kentucky~~[this state]~~,  
 20 either directly or indirectly, as a mortgage loan company or mortgage loan  
 21 broker if the mortgage loan company or mortgage loan broker~~[he]~~ is not  
 22 licensed in accordance with the requirements of~~[under]~~ this subtitle, unless  
 23 that person is exempt under KRS 286.8-020 and, if required by KRS 286.8-  
 24 020(3) has timely filed a completed application for a claim of exemption, and  
 25 the filed application for a claim of exemption has been approved by the  
 26 executive director.

27 (b) It is unlawful for any natural person to make a loan under KRS 286.8-020(10)

1 without making the disclosure required by KRS 286.8-020(7).

2 (c) It is unlawful for any natural person to transact business in Kentucky, either  
 3 directly or indirectly, as a mortgage loan originator or mortgage loan  
 4 processor, unless otherwise exempted, ~~[to originate mortgage loans or~~  
 5 ~~otherwise participate in the mortgage lending process in Kentucky]~~ if the  
 6 mortgage loan originator or mortgage loan processor is not registered in  
 7 accordance with KRS 286.8-255.

8 (d) It is unlawful for any mortgage loan company or mortgage loan broker to  
 9 employ or use ~~[with or without compensation,]~~ a mortgage loan originator or  
 10 a mortgage loan processor if the mortgage loan originator or mortgage loan  
 11 processor is not registered in accordance with KRS 286.8-255 or otherwise  
 12 exempted.

13 (e) It is unlawful for any mortgage loan company to employ or use, with or  
 14 without compensation, a mortgage loan broker if the mortgage loan broker  
 15 is not licensed in accordance with the requirements of this subtitle unless  
 16 that person is exempt under Section 2 of this Act and, if required by  
 17 subsection (3) of Section 2 of this Act has timely filed a completed  
 18 application for a claim of exemption, and the filed application for a claim of  
 19 exemption has been approved by the executive director.

20 (2) Neither the fact that a license or certificate of registration has been issued nor the  
 21 fact that any person, business, or company is effectively registered or licensed,  
 22 constitutes a finding by the executive director that any document filed under this  
 23 subtitle is true, complete, and not misleading. Nor does such fact directly or  
 24 indirectly imply approval of the registrant or licensee by the executive director or  
 25 the Commonwealth of Kentucky. It is unlawful to make or cause to be made to any  
 26 prospective customer or client any representation inconsistent with this subsection.

27 (3) Any mortgage loan company or mortgage loan broker ~~[person]~~ who willfully

transacts business in Kentucky~~[this state]~~ in violation of subsection (1) of this section shall have no right to collect, receive, or retain any interest or charges whatsoever on a loan contract, but the unpaid principal of the loan shall be paid in full.

**(4) Each solicited, attempted, or closed loan shall constitute a separate violation of this section.**

**(5) The unique identifier, name, and signature of any person originating a mortgage loan shall be clearly shown on the mortgage loan application. It shall be unlawful to make or cause to be made any representations on a mortgage loan application that are inconsistent with this subsection. The unique identifier shall also be displayed on solicitations or advertisements, including business cards or websites, of all persons holding themselves out as being able to originate mortgage loans in Kentucky, and any other document as established by rule, regulation, or order of the executive director.**

➔Section 5. KRS 286.8-032 is amended to read as follows:

(1) A license as a mortgage loan company or a mortgage loan broker may be obtained by filing a written application with the executive director. The executive director may require the electronic filing of the application and fees with the State Regulatory Registry, LLC, or its successor organization; its parent, affiliate, or operating subsidiary; or other agencies or authorities, as part of the nationwide mortgage licensing system, and consistent with the intent found in KRS 286.8-285.

(2) The application shall:

(a) Be sworn to;

(b) State the name of the applicant and each of the applicant's affiliates and operating subsidiaries engaged in business as a mortgage loan company or a mortgage loan broker;

(c) State the name under which the applicant will conduct business in Kentucky;

- 1 (d) State the physical address of the applicant's principal office and branch or
- 2 branches;
- 3 (e) List the name, residence, and business address of each person having an
- 4 interest in the business as principal, partner, officer, trustee, and director,
- 5 specifying the capacity and title of each;
- 6 (f) Indicate the general plan and character of the business;
- 7 (g) Contain a corporate surety bond or other instrument as prescribed by KRS
- 8 286.8-060;
- 9 (h) If applying for a mortgage loan broker license, contain a compiled financial
- 10 statement of the applicant; or, if applying for a mortgage loan company
- 11 license, contain a reviewed or audited financial statement of the applicant
- 12 prepared by a licensed or certified public accountant;
- 13 (i) Include payment of the required fees; and
- 14 (j) Include such other information as the executive director determines necessary.
- 15 (3) No mortgage loan company license may be granted unless the applicant:
  - 16 **(a)** Has and maintains, so long as the license is in effect, a minimum, documented
  - 17 funding source of one million dollars (\$1,000,000);
  - 18 **(b)** ~~[If a mortgage loan company]~~Has a net worth in excess of one million dollars
  - 19 (\$1,000,000); **or**
  - 20 **(c) Has and maintains a net worth in excess of one hundred thousand dollars**
  - 21 **(\$100,000) and certifies to the executive director that the company will not**
  - 22 **make or purchase loans secured by mortgages on residential real property**
  - 23 **located in Kentucky so long as the license is in effect**~~[an additional funding~~
  - 24 ~~source is not required]~~.
- 25 (4) A license issued to a mortgage loan company or a mortgage loan broker shall entitle
- 26 all officers and employees of the person, if a corporation, and all members, partners,
- 27 trustees, and employees, if an association, partnership, natural person, or trust, to

1 engage in the mortgage loan business pursuant to this subtitle, subject to the  
2 applicable requirements of this subtitle.

3 (5) If a licensee desires to establish a branch, the licensee shall file an application with  
4 the executive director that includes the physical location and telephone number of  
5 the branch, the name of the prospective manager, the anticipated opening date, and  
6 any other information requested by the executive director.

7 (6) Each applicant for a mortgage loan broker license shall have at least one (1)  
8 **managing principal at all times. This managing principal**~~owner who owns at~~  
9 ~~least twenty percent (20%) of the applicant and~~ shall provide the executive director  
10 sufficient proof of a minimum of two (2) years' experience working in the mortgage  
11 industry. The executive director shall determine from the application whether an  
12 applicant has sufficient experience to meet this requirement. **Each mortgage loan**  
13 **broker shall obtain written approval from the executive director prior to a change**  
14 **of managing principal.**

15 (7) All applicants for a mortgage loan broker license shall have successfully completed  
16 an educational training course, approved by the office, of not less than thirty (30)  
17 classroom hours' duration. **Applicants**~~Mortgage loan brokers~~ who have held a  
18 **mortgage loan broker** license for at least one (1) year **in the past five (5) years** shall  
19 be exempt from this requirement~~[ if the applicant has held a mortgage broker~~  
20 ~~license five (5) consecutive years prior to the filing of the application with the~~  
21 ~~executive director]~~. This section shall not apply to renewals of existing licenses.  
22 Approval of an applicant for a mortgage loan broker license under this subsection  
23 shall be conditioned on the applicant establishing that the district, state, or territory  
24 from which the applicant applies, resides, or performs the primary portion of his or  
25 her mortgage business has rules, regulations, or other provisions which by  
26 reciprocity or comity are at least equivalent to this subsection.

27 (8) The application for a mortgage loan broker and mortgage loan company license

1 shall state:

2 (a) The address of the physical location where the business is to be located in  
3 compliance with KRS 286.8-250 and whether such location is a residence.

4 *The physical location where the mortgage lending process is conducted*  
5 *shall have a street address. A post office box or similar designation shall not*  
6 *meet the requirements of this subsection. The physical location shall be*  
7 *accessible to the general public as a place of business, unless the physical*  
8 *location is a residence and proof of residence has been submitted as*  
9 *required by this section.* Photographs of the exterior, interior, and exterior

10 sign of each location shall accompany the application. If the physical location  
11 is not a residence and is leased, the lease shall be for a minimum term of one  
12 (1) year. A copy of the lease and the names of all employees conducting  
13 business under the lease shall accompany the application. If the physical  
14 location is a residence, proof that the location is a residence, in a form as  
15 required by the executive director, shall accompany the application. Proof of  
16 residence shall confirm that the *residence is owned or leased by the mortgage*  
17 *loan broker, mortgage loan company, or its employees or owners*~~[mortgage~~  
18 ~~loan broker owns or leases the residence]~~ and *that the residence is the*~~[lives~~  
19 ~~in the residence as the mortgage loan broker's]~~ main residence *of any such*  
20 *persons.* Proof of physical location shall include proof that local zoning  
21 requirements are satisfied.

22 (b) A mortgage loan company or mortgage loan broker shall notify the executive  
23 director of a change in the location or name of its business or the addition of  
24 any branch or branches in writing at least ten (10) days prior to the change.

25 (9) On or after January 1, 2009, every mortgage loan company and mortgage loan  
26 broker shall maintain an agent for service of process in the Commonwealth. The  
27 name, address, telephone number, and electronic mail address of the agent for

1 service of process shall be filed with the application. The executive director shall be  
 2 notified in writing at least five (5) days prior to any change in the status of an agent  
 3 for service of process.

- 4 (10) The executive director may deem an application abandoned when an applicant fails  
 5 to provide or respond to a request for additional information.

6 ➔Section 6. KRS 286.8-034 is amended to read as follows:

- 7 (1) An applicant for a license under this subtitle shall provide the executive director  
 8 with separate checks payable to the Kentucky State Treasurer for:

9 (a) An investigation fee of three hundred dollars (\$300) for the principal office  
 10 and one hundred fifty dollars (\$150) for each branch office; and

11 (b) A license fee of four hundred fifty dollars (\$450) for the principal office and  
 12 two hundred fifty dollars (\$250) for each branch originating mortgages on  
 13 residential real properties located in Kentucky if the applicant applies for a  
 14 license on or between November 1 and June 30 of the following calendar year  
 15 or of one hundred fifty dollars (\$150) for the principal office and one hundred  
 16 dollars (\$100) for each branch if the applicant applies for a license on or  
 17 between July 1 and October 31 of the same calendar year.

- 18 (2) A license issued between January 1 and October 31 of the same calendar year shall  
 19 expire on December 31 of the same calendar year. A license issued between  
 20 November 1 and December 31 of the same calendar year shall expire on December  
 21 31 of the following calendar year.

- 22 (3) A license may be renewed by paying the annual renewal license fee which is three  
 23 hundred fifty dollars (\$350) for the principal office and two hundred fifty dollars  
 24 (\$250) for each branch originating mortgages on residential real properties located  
 25 in Kentucky,~~[-and]~~ submitting **to the Nationwide Mortgage Licensing System and**  
 26 **Registry an annual report of condition, which shall be in such form and contain**  
 27 **such information as the Nationwide Mortgage Licensing System and Registry**



1 ~~may require, [an annual report of activity as prescribed by the executive director]~~  
 2 and submitting to the executive director any other information required by the  
 3 executive director. The executive director shall not approve the renewal of a  
 4 mortgage loan broker's license if the executive director has not received the  
 5 information on physical location as required in KRS 286.8-032(8).

6 (4) The application, fees, and any required information shall be received by the  
 7 executive director on or before November 30 prior to the December 31 expiration  
 8 date. The executive director may reinstate the license within thirty-one (31) days of  
 9 the expiration of the license if the licensee pays the filing fee and a reinstatement  
 10 fee of two hundred fifty dollars (\$250). A license shall not be reinstated when the  
 11 application, fees, or any required information is received on or after February 1 of  
 12 the following year that the renewal application was due.

13 (5) The executive director shall provide a licensee with a duplicate copy of any license  
 14 upon a satisfactory showing of its loss and payment of a ten dollar (\$10)  
 15 replacement fee.

16 ➔ Section 7. KRS 286.8-044 is amended to read as follows:

17 (1) Notice of entry of any order of suspension or denial of a license, registration, or  
 18 claim of exemption to any applicant, registrant, or licensee shall be given in  
 19 writing and served personally or sent by certified mail to the last known address  
 20 of the person affected. The affected person, upon timely written request to the  
 21 executive director, shall be entitled to a hearing in accordance with the provisions  
 22 of KRS Chapter 13B; but if no written request is received within twenty (20) days  
 23 of service of the notice, the executive director shall enter a final order suspending  
 24 or denying the license or registration.

25 (2) The executive director may file an administrative complaint against any person if it  
 26 appears on grounds satisfactory to the executive director that a potential or actual  
 27 violation of this subtitle has been committed and when the person may be subject to

the penalties of KRS 286.8-046, 286.8-090, and 286.8-990. The executive director shall serve the administrative complaint by certified mail or personal delivery to the last known address of the person named in the complaint. The person named in the administrative complaint shall be entitled to a hearing, but only upon timely receipt of a written answer and request for a hearing within twenty (20) days of the service[mailing] or hand delivery of the administrative complaint. If timely requested, an administrative hearing shall be held in accordance with the provisions of KRS Chapter 13B ~~and 808 KAR 12:030~~. *If a written answer and request for hearing are not made within twenty (20) days of service or delivery of the complaint, the executive director shall enter a final order granting the relief requested in the complaint.*

*(3) Service by certified mail shall be complete upon the earlier of the following:*

*(a) The date on which the person receives the mail;*

*(b) The date on which the agency receives the return receipt; or*

*(c) The date on which the agency receives notice that the mail has been returned undelivered.*

➔ Section 8. KRS 286.8-046 is amended to read as follows:

*(1)* The executive director may levy a civil penalty against any person who violates any provision of or any administrative regulation promulgated under this subtitle or order issued by the executive director under this subtitle. The civil penalty shall be not less than one thousand dollars (\$1,000) nor more than twenty-five thousand dollars (\$25,000) per violation, plus the state's costs and expenses for the examination, investigation, and prosecution of the matter, including reasonable attorney's fees and court costs.

*(2) The executive director may order restitution, refund, recovery of expenses, or direct such other affirmative action as the executive director deems necessary against any person who violates any order issued by the executive director or any*

1 **provision of, or administrative regulation promulgated under, this subtitle.**

2 ➔ Section 9. KRS 286.8-060 is amended to read as follows:

- 3 (1) Except as otherwise provided in this section, **each**~~[at the time of filing an~~  
 4 ~~application or renewal for registration as a]~~ mortgage loan company,~~[or] mortgage~~  
 5 loan broker, **and mortgage loan originator**~~[the applicant]~~ shall post **or be covered**  
 6 **by a surety bond for the entire licensure or registration period**~~[corporate surety~~  
 7 ~~bonds]~~ in an amount **prescribed by the executive director, but in no event shall the**  
 8 **bond be**~~[not]~~ less than two hundred fifty thousand dollars (\$250,000) for mortgage  
 9 loan companies and~~[not less than]~~ fifty thousand dollars (\$50,000) for mortgage  
 10 loan brokers.
- 11 (2) Every bond shall provide for suit thereon by any person who has a cause of action  
 12 under this subtitle. The total liability of the surety, to all persons, cumulative or  
 13 otherwise, shall not exceed the amount specified in the bond.
- 14 (3) The bond shall be **in a form prescribed by the executive director and shall be** made  
 15 payable to the executive director~~[of the Office of Financial Institutions]~~. **The terms**  
 16 **of the bond shall provide that it may not be terminated without thirty (30) days**  
 17 **prior written notice to the executive director.**
- 18 (4) Every bond shall be available for the recovery of expenses, fines, **restitution**, and  
 19 fees levied by the executive director under this subtitle, and for losses or damages  
 20 that~~[are determined by the executive director to]~~ have been incurred by any  
 21 borrower or consumer as a result of the **registrant's**~~[applicant's]~~ or licensee's failure  
 22 to comply with the requirements of this subtitle.
- 23 (5) Every bond shall provide that no suit shall be maintained to enforce any liability on  
 24 the bond unless brought within three (3) years after the act upon which it is based.
- 25 (6)~~[In lieu of posting corporate surety bonds, the applicant may:~~  
 26 ~~(a) Deposit with the executive director an irrevocable letter of credit for an~~  
 27 ~~amount equal to the required bond upon which the applicant is the obligor,~~

~~issued by a bank approved by the executive director, whose deposits are insured by the Federal Deposit Insurance Corporation;~~

~~(b) Establish an account payable to the executive director in a federally insured financial institution in this state and deposit money of the United States in an amount equal to the amount of the required bond; or~~

~~(c) Deposit with the executive director an escrow agreement for a savings certificate of a federally insured financial institution in this state for an amount payable which is equal to the amount of the required bond and which is not available for withdrawal except by direct order of the executive director.~~

~~Interest earned on the certificate accrues to the applicant.~~

~~(7)}~~ If the executive director or the executive director's representative shall at any time reasonably determine that the bond or securities aforesaid are insecure, deficient in amount, or exhausted in whole or part, he may by written order require the filing of a new or supplemental bond or the deposit of new or additional securities in order to secure compliance with this subtitle, the order to be complied with within thirty (30) days following service thereof upon the registrant or licensee.

➔ Section 10. KRS 286.8-100 is amended to read as follows:

(1) No licensee shall establish or maintain a branch transacting business in Kentucky, either directly or indirectly, without filing the application as described in KRS 286.8-032(5) and receiving prior written approval of the executive director.

(2) Each application for approval of the establishment and maintenance of a branch shall state the physical address of the proposed location, the functions to be performed, and other information the executive director may require if different from that contained in the original application for a license or registration.

(3) Each application under this section shall be sworn to and accompanied by the appropriate fee as set out in KRS 286.8-034(1)(b).

(4) Upon the receipt by the executive director of an application and the required fee, if

1 he finds that the applicant is otherwise in compliance with the provisions of this  
 2 subtitle, he shall approve the application.

3 (5) The executive director may deem an application abandoned and subject to KRS  
 4 286.8-090 when the application is received incomplete and the applicant fails to  
 5 provide any required information or fee under this subtitle or fails to respond to a  
 6 request by the executive director for further information.

7 ➔Section 11. KRS 286.8-150 is amended to read as follows:

8 (1) Except as otherwise provided by law, applications for registration or renewals, all  
 9 papers, documents, reports, and other written instruments filed with the executive  
 10 director under this subtitle, or obtained pursuant to an examination by the Office of  
 11 Financial Institutions are open to public inspection, except that the executive  
 12 director pursuant to the provisions of KRS Chapter 61 may classify as confidential  
 13 or withhold from public inspection for such time as he considers necessary any  
 14 information which, in his judgment, the public welfare or the welfare of any  
 15 licensee or registrant~~[mortgage loan company]~~ or its customers requires to be so  
 16 withheld. All investigations and information contained therein shall not be public  
 17 until such time as the executive director makes all or part of the investigation public  
 18 or the investigation is closed.

19 (2) The executive director may~~[shall have the authority to]~~ classify as confidential  
 20 certain records and information obtained by the Office of Financial Institutions  
 21 when such matters are obtained from the Nationwide Mortgage Licensing System  
 22 and Registry or from a governmental agency~~[upon the express condition that they~~  
 23 ~~shall remain confidential]~~.

24 (3) The executive director may classify as confidential and prohibit the disclosure of  
 25 any request for documents or records submitted pursuant to KRS 286.8-180, for  
 26 such time as deemed necessary if, in the executive director's judgment, the  
 27 disclosure of said request for documents or records may impede or interfere with

an ongoing investigation conducted pursuant to KRS 286.8-140 or may cause the destruction or secretion of documents by the targeted party.

(4) Notwithstanding any provision to the contrary in this subtitle or in KRS Chapter 61, any information, documents, or material provided to or obtained from the Nationwide Mortgage Licensing System and Registry shall be subject to the confidentiality requirements set forth in Section 1512 of the S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and amendments thereto.

➔Section 12. KRS 286.8-170 is amended to read as follows:

- (1) Every mortgage loan company and mortgage loan broker shall keep at its principal office correct and complete records of its business transactions, books of accounts, and minutes of proceedings of its directors, principals, or partners. Complete records of all business transactions at the principal office shall be maintained at the principal office. Each branch office shall keep detailed records of all transactions at such branch office and shall furnish full control records to the principal office.
- (2) No mortgage loan company or mortgage loan broker by any system of accounting or any device of bookkeeping shall, either directly or indirectly, enter any of its assets upon its books in the name of any person, partnership, association, or corporation, or under any title, designation, or value that is not thoroughly descriptive of any assets.
- (3) The affairs of every mortgage loan company, ~~and~~ mortgage loan broker, mortgage loan originator, and mortgage loan processor, and the records required to be maintained by KRS 286.8-160 are subject at any time or from time to time to such periodic, special, or other examinations by the executive director or an examiner of the executive director within or without this state and with or without notice to the person being examined ~~[mortgage loan company and mortgage loan broker]~~, as the executive director deems necessary or appropriate in the public interest. All records ~~[books, papers, and records of assets]~~ of the person being

1 examined~~[mortgage loan company]~~ shall be subject to the executive director's~~[his]~~  
 2 inspection.

3 (4) The examiner shall make a thorough examination into the condition, workings and  
 4 affairs of the person being examined~~[association]~~ and report any violation of law or  
 5 any unauthorized unsafe practices or any failure to keep and have correct any  
 6 required books and records as he may find to the executive director.

7 (5) A mortgage loan company or mortgage loan broker shall pay a fee for each such  
 8 examination of its operations or employees based on fair compensation for time  
 9 and actual expense. For the purpose of avoiding unnecessary duplication of  
 10 examinations, the executive director, insofar as he deems it practicable in  
 11 administering this section, may cooperate and exchange information with any  
 12 agency of the state or federal government, other states, the Nationwide Mortgage  
 13 Licensing System and Registry, or the federal National Mortgage Association,  
 14 Government National Mortgage Association, and Federal Home Loan Mortgage  
 15 Corporation, and may accept such examinations in whole or in part in lieu of an  
 16 examination by the executive director.

17 (6) The executive director or his examiners or designated representative shall have  
 18 access to all records~~[books and papers]~~ of a mortgage loan company,~~[and]~~  
 19 mortgage loan broker, mortgage loan originator, and mortgage loan processor  
 20 which relate to their business, and records~~[books and papers]~~ kept by any officers,  
 21 agents, or employees, relating to or upon which any record of its business is kept.

22 (7) A mortgage loan originator or mortgage loan processor shall make available and  
 23 grant access to the executive director, or an examiner of the executive director,  
 24 the records relating to its operations. A mortgage loan company or mortgage loan  
 25 broker shall make available and grant access to all records of its current and  
 26 former employees and contractors relating to its operations.

27 (8) Any person subject to this subtitle shall make or compile reports or prepare other

information as directed by the executive director or an examiner of the executive director to include:

(a) Accounting compilations;

(b) Information lists and data concerning loan transactions in a format prescribed by the executive director or an examiner of the executive director; and

(c) Such other information deemed necessary to carry out the purposes of this section.

(9) No mortgage loan company, mortgage loan broker, mortgage loan originator, or mortgage loan processor shall impede the executive director or an examiner of the executive director from interviewing its officers, principals, members, employees, independent contractors, agents, or customers.

(10) In making any examination or investigation authorized by this subtitle, the executive director may control access to any documents and records of the licensee or person under examination or investigation. The executive director may take possession of the documents and records, or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the executive director. Unless the executive director has reasonable grounds to believe the documents or records of the licensee have been, or are at risk of being, altered or destroyed for purposes of concealing a violation of this subtitle, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(11) It shall be unlawful for any person subject to investigation or examination under this subtitle to knowingly withhold, abstract, alter, remove, mutilate, destroy, or



1 secrete any books, records, or other information.

2 (12) In order to carry out the purposes of this subtitle, the executive director may:

3 (a) Retain attorneys, accountants, or other professionals and specialists as  
 4 examiners, auditors, or investigators to conduct or assist in the conduct of  
 5 examinations or investigations;

6 (b) Enter into agreements or relationships with other government officials or  
 7 regulatory associations in order to improve efficiencies and reduce  
 8 regulatory burden by sharing resources, standardized or uniform methods  
 9 or procedures, and documents, records, information, or evidence obtained  
 10 under this subtitle; and

11 (c) Use, hire, contract, or employ public or privately available analytical  
 12 systems, methods, or software to examine or investigate the persons subject  
 13 to this subtitle.

14 (13) The authority of this section shall remain in effect, whether a person acts or  
 15 claims to act under any licensing or registration law of this subtitle, or claims to  
 16 act without such authority.

17 ➔ Section 13. KRS 286.8-190 is amended to read as follows:

18 (1) The executive director may investigate either upon complaint or otherwise when it  
 19 appears that any person is conducting business in an unsafe and injurious manner or  
 20 otherwise is in violation of this subtitle, or any rule or order hereunder, or when it  
 21 appears that any person is engaging in the mortgage loan business without being  
 22 licensed or registered, or legally exempted from licensing or registration, under the  
 23 provisions of this subtitle.

24 (2) If it appears to the executive director upon sufficient grounds or evidence  
 25 satisfactory to the executive director that any person~~[mortgage loan company or~~  
 26 ~~mortgage loan broker]~~ has engaged in or is about to engage in any practice in  
 27 violation of this subtitle or any rule or order hereunder, or that person's mortgage

1        loan business~~[the mortgage loan company's or mortgage loan broker's]~~ affairs are in  
 2        an unsafe condition, the executive director may:

- 3        (a)    Order the person to cease and desist from the acts or practices by a formal  
 4                written order delivered to the person stating any alleged violation. The order  
 5                shall specify the effective date thereof, and notice of entry shall be served  
 6                personally or sent by certified mail to the last known address of the person  
 7                affected. The person, upon written application, shall be entitled to a hearing;  
 8                but if a written application for a hearing is not timely received by the  
 9                executive director within twenty (20) days after the certified mailing or  
 10              personal delivery of the order, it shall be made final and shall remain in effect  
 11              until withdrawn by the executive director or terminated by a court order; and
- 12        (b)    Apply directly to Franklin Circuit Court, or any court of competent  
 13                jurisdiction, to enjoin any acts or practices in violation of this subtitle and to  
 14                enforce compliance with this subtitle or any rule or order hereunder. Upon  
 15                proper showing, a permanent or temporary injunction, restraining order, or  
 16                writ of mandamus shall be granted and a receiver or conservator may be  
 17                appointed for the defendant or the defendant's assets. The executive director  
 18                shall not be required to post a bond.

19        ➔Section 14.    KRS 286.8-220 is amended to read as follows:

- 20        (1)    It shall be unlawful for any person to make or cause to be made, in any document  
 21                filed with the executive director, a governmental agency, the Nationwide  
 22                Mortgage Licensing System and Registry, or in any proceeding under this subtitle,  
 23                any statement that is, at the time and in light of the circumstances under which it is  
 24                made, false or misleading in any material respect, including an omission of a  
 25                material fact.
- 26        (2)    It shall be unlawful for any person, in connection with a transaction involving the  
 27                mortgage lending process, or in connection with the operation of a mortgage loan

1 business or the management or servicing of mortgage loans~~[contracts]~~, directly or  
2 indirectly:

- 3 (a) To employ a device, scheme, or artifice to defraud;
- 4 (b) To engage in any act, practice, or course of business that operates or would  
5 operate as a fraud or deceit upon any person;
- 6 (c) To fail to disburse funds in accordance with a loan commitment;
- 7 (d) To delay closing of any mortgage loan for the purpose of increasing interest,  
8 costs, fees, or charges payable by the borrower;
- 9 (e) Upon receipt of a customer's written request, to delay beyond five (5) business  
10 days the issuance of a written loan payoff amount or to delay beyond ten (10)  
11 business days the issuance of a payment history;~~[or]~~
- 12 (f) To charge a fee for the issuance of an initial written loan payoff amount or  
13 payment history for each calendar quarter as set out in paragraph (e) of this  
14 subsection;

15 **(g) To obtain property by fraud or misrepresentation;**

16 **(h) To fail to make disclosures as required by this subtitle or any other**  
17 **applicable state or federal law including regulations thereunder; or**

18 **(i) To fail to comply with state or federal laws, including the rules and**  
19 **regulations thereunder, that are applicable to transacting business in**  
20 **Kentucky.**

- 21 (3) Unless exempted by KRS 286.8-020(1), it shall be unlawful for any person to  
22 transact~~[any]~~ business~~[ in the mortgage lending process on residential real~~  
23 ~~property]~~ in Kentucky unless it **complies with the provisions of this subtitle**~~[-~~:

- 24 ~~(a) Qualifies to do business in Kentucky as required by KRS Chapter 271B; and~~
- 25 ~~(b) Complies with the provisions of this subtitle].~~

- 26 (4) It shall be unlawful for any person to use prescreened trigger lead information  
27 derived from a consumer report to solicit a consumer who has applied for a

1 mortgage loan with another mortgage loan company or mortgage loan broker, when  
2 the person:

- 3 (a) Fails to state in the initial solicitation that the person is not affiliated with the  
4 mortgage loan company or mortgage loan broker with which the consumer  
5 initially applied;
- 6 (b) Fails in the initial solicitation to conform to state and federal law relating to  
7 prescreened solicitations using consumer reports, including the requirement to  
8 make a firm offer of credit to the consumer;
- 9 (c) Uses information regarding consumers who have opted out of the prescreened  
10 offers of credit or who have placed their contact information on the state or  
11 federal do-not-call registry; or
- 12 (d) Solicits a consumer with an offer of certain rates, terms, and costs with the  
13 knowledge that the rates, terms, or costs will be subsequently changed to the  
14 detriment of the consumer.

15 ➔ Section 15. KRS 286.8-225 is amended to read as follows:

16 **There is hereby created in the State Treasury a trust and revolving fund designated as**  
17 **the "Mortgage Fraud Prosecution Fund."**~~[ The mortgage lending fraud prosecution~~  
18 ~~account is created in the custody of the State Treasurer.]~~ All civil penalties **or**  
19 **contributions** directed by the executive director to be transmitted to the mortgage~~{~~  
20 ~~lending}~~ fraud prosecution **fund**~~[account]~~ shall be deposited into the **fund**~~[account]~~.  
21 Expenditures from the **fund**~~[account]~~ may be used~~[only]~~ for **the investigation and**  
22 **criminal prosecution of fraudulent activities within the residential mortgage lending**  
23 **process, training related to prevention, detection, and investigation of mortgage fraud,**  
24 **and consumer education related to mortgage fraud.** Only the executive director of the  
25 Office of Financial Institutions or the executive director's designee may authorize  
26 expenditures from the account. **The money deposited in the fund is hereby appropriated**  
27 **for the uses set forth in this section. Notwithstanding KRS 45.229, any money**

remaining in the fund at the close of any fiscal year shall not lapse but shall be carried forward to the next fiscal year. The fund may also receive additional state appropriations, gifts, grants, contributions, and federal funds. All interest earned on money in the fund shall be credited to the fund.

➔Section 16. KRS 286.8-227 is amended to read as follows:

The executive director is authorized through the collection of civil penalties or contributions~~[from any violation of this subtitle]~~ to retain the funds collected for the purpose of depositing the funds into the mortgage lending fraud prosecution fund~~[account]~~ created in KRS 286.8-225. The funds shall be transmitted monthly to the State Treasurer, who shall deposit the funds into the mortgage lending fraud prosecution fund~~[account]~~ created in KRS 286.8-225. The executive director of the Office of Financial Institutions is responsible for the distribution of the funds in the account and shall, in consultation with the Attorney General and local prosecutors, develop administrative regulations for the use of these funds~~[to pursue criminal prosecution of fraudulent activities within the residential mortgage lending process]~~.

➔Section 17. KRS 286.8-240 is amended to read as follows:

KRS 286.8-010 to 286.8-285~~[286.8-230]~~ shall be known and may be cited as the "Mortgage Licensing and Regulation~~[Loan Company and Mortgage Loan Broker]~~ Act."

➔Section 18. KRS 286.8-255 is amended to read as follows:

(1) No natural person~~[mortgage loan originator or mortgage loan processor]~~ shall transact business~~[originate or process mortgage loans on residential real property]~~ in Kentucky, either directly or indirectly, as a mortgage loan originator or mortgage loan processor unless such mortgage loan originator or mortgage loan processor is registered with the office and has been issued a current certificate of registration by the office, complies with all applicable requirements of this subtitle, and maintains a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry. The office shall maintain a database of

all mortgage loan originators and mortgage loan processors originating or processing mortgage loans on residential real property in Kentucky. The office shall issue a certificate of registration to all registered mortgage loan originators and mortgage loan processors.

(2) The application for registration shall:

(a) Be on a form prescribed by the executive director;

(b) Be accompanied by a registration fee in the amount of fifty dollars (\$50) which shall be used solely by the office to establish and maintain a database of all mortgage loan originators and mortgage loan processors, and any excess funds shall be retained by the office and shall not lapse to the general fund;

and

(c) Contain such information as the executive director deems necessary to carry out the purposes of this subtitle.

(3) (a) Applications for initial registrations of mortgage loan originators and mortgage loan processors shall be accompanied by satisfactory evidence that the applicant has successfully completed twenty (20)~~twelve (12) classroom~~ hours of pre-licensing education courses related directly to the mortgage lending process, as approved and designated by the executive director.~~[ This subsection shall not apply to renewals of existing certificates of registration.]~~

(b) For the purposes of subsection (3)(a) of this section, the pre-licensing education courses approved and designated by the executive director shall meet the minimum requirements set forth in Section 1505(c) of the S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and amendments thereto, and shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry.

(c) For the purposes of subsection (3)(a) of this section, the executive director may accept as credit towards the completion of the pre-licensing education

requirements in this state, the completion of pre-licensing education  
requirements in any other state so long as the education has met the  
requirements set forth in subsections (3)(a) and (b) of this section.

(4) Applications for renewals of certificates of registration by registered mortgage loan originators and mortgage loan processors shall be accompanied by satisfactory evidence that the individual has successfully met the continuing education requirements of KRS 286.8-260 and by payment of a renewal fee in the amount of fifty dollars (\$50). The renewal fee shall be used solely by the office to establish and maintain a database of all mortgage loan originators and mortgage loan processors and any excess funds shall be retained by the office and shall not lapse to the general fund.

~~(5) [The executive director may issue for good cause a temporary certificate of registration for a period not to exceed one hundred eighty (180) days to a mortgage loan originator or mortgage loan processor who is awaiting the completion of a criminal records background check pursuant to this subtitle. The temporary certificate of registration shall expire automatically by operation of law in one hundred eighty (180) days from the date of issuance if the application is not completed. No more than one (1) temporary certificate of registration shall be issued within an eighteen (18) month period.]~~

{6}] A certificate of registration issued between January 1 and October 31 of the same calendar year shall expire on December 31 of the same calendar year. A certificate of registration issued between November 1 and December 31 of the same calendar year shall expire on December 31 of the following calendar year. Any certificate of registration that has expired may be reinstated by the executive director upon payment of the annual registration fee, and a reinstatement fee of two hundred fifty dollars (\$250), within thirty (30) days of the expiration of the certificate of registration.

1 ~~(6)~~~~(7)~~ The office shall provide a registrant with a duplicate copy of any certificate of  
 2 registration upon satisfactory showing of its loss and payment of a ten dollar (\$10)  
 3 replacement fee.

4 ~~(7)~~~~(8)~~ All mortgage loan originators and mortgage loan processors subject to the  
 5 registration requirements of this section shall also be subject to and comply with all  
 6 applicable provisions of this subtitle.

7 ~~(8)~~~~(9)~~ The executive director may require the submission of ~~a federal and state~~  
 8 ~~criminal~~ background records checks, including but not limited to checks for state,  
 9 federal, and international criminal histories, civil or administrative records, and  
 10 any other information as deemed necessary to comply with the minimum  
 11 requirements set forth in Section 1505 of the S.A.F.E. Mortgage Licensing Act,  
 12 Pub. L. No. 110-289, and amendments thereto, as well as the submission of an  
 13 independent credit report obtained from a consumer reporting agency described  
 14 in the Fair Credit Reporting Act, 15 U.S.C. sec. 1681a,~~check~~ as part of an  
 15 application or renewal application filed under this subtitle. The cost of the  
 16 background and records checks, and credit report~~check~~ shall be borne by the  
 17 applicant.

18 (9) No mortgage loan originator or mortgage loan processor shall be granted or  
 19 shall be entitled to maintain a certificate of registration unless he or she satisfies  
 20 the following minimum standards for registration:

21 (a) The applicant has never had a loan originator's license or registration  
 22 revoked in any governmental jurisdiction, except revocations that have been  
 23 formally vacated or set aside shall not be deemed a revocation for the  
 24 purposes of this section;

25 (b) The applicant has not been convicted of, pled guilty to, or pled nolo  
 26 contendere to a felony in any domestic, foreign, or military court:

27 1. During the seven (7) year period preceding the date of the application



- 1                   for registration or renewal of registration; or
- 2                   2. At any time preceding such date of application for registration or
- 3                   renewal of registration, if such felony involved an act of fraud or
- 4                   dishonesty, a breach of trust, or money laundering;
- 5                   (c) The applicant has demonstrated financial responsibility, character, and
- 6                   general fitness such as to command the confidence of the community and to
- 7                   warrant a determination that the loan originator or loan processor will
- 8                   operate honestly, fairly, lawfully, and efficiently within the purposes of the
- 9                   subtitle;
- 10                  (d) The applicant has completed the pre-licensing education requirement set
- 11                  forth in subsection (3) of this section;
- 12                  (e) The applicant has passed a qualified written test which satisfies the
- 13                  minimum requirements set forth in Section 1505(d) of the S.A.F.E.
- 14                  Mortgage Licensing Act, Pub. L. No. 110-289, and amendments thereto;
- 15                  and
- 16                  (f) If required by Section 9 of this Act, the applicant holds or is covered by a
- 17                  surety bond which satisfies the minimum requirements set forth in Section
- 18                  9 of this Act.
- 19                  (10) No mortgage loan originator or mortgage loan processor shall be granted a
- 20                  renewal certificate of registration unless he or she satisfies the following
- 21                  minimum standards for renewal of registration:
- 22                  (a) The applicant has met and continues to meet the minimum standards set
- 23                  forth in subsection (9) of this section; and
- 24                  (b) The applicant has satisfied the annual continuing education requirements
- 25                  set forth in Section 19 of this Act.
- 26                  (11) The certificate of registration of any mortgage loan originator or mortgage loan
- 27                  processor that fails to comply with the minimum standards for registration

renewal set forth in this section shall expire and shall promptly be deemed surrendered to the executive director without demand. The executive director may adopt procedures and requirements for the reinstatement of expired registrations consistent with the standards established by the Nationwide Mortgage Licensing System and Registry.

(12) Mortgage loan originators engaging in any of the activities set forth in subsection (21)(a) of Section 1 of this Act shall provide loan origination services to not more than one (1) mortgage loan company or mortgage loan broker at a time.

➔ Section 19. KRS 286.8-260 is amended to read as follows:

(1) ~~[Beginning July 1, 2004, ]~~Any person required to be registered under this subtitle shall complete at least twelve (12) hours of continuing professional education on an annual basis that is approved and designated by the executive director. A minimum of four (4) hours of continuing professional education at least once every two (2) years shall be instruction on the requirements of this subtitle or KRS 360.100, or a combination of both~~[, a minimum of six (6) of which must be classroom hours, by June 30, 2005, and annually thereafter].~~

(2) For the purposes of subsection (1) of this section, the continuing professional education courses approved and designated by the executive director shall meet the minimum requirements set forth in Section 1505(b) of the S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and amendments thereto. The education courses approved and designated by the executive director shall also be reviewed and approved by the Nationwide Mortgage Licensing System and Registry unless the Nationwide Mortgage Licensing System and Registry provides otherwise~~[Up to twelve (12) hours of continuing professional education may be carried forward from one (1) continuing education year to the next continuing education year. The continuing education year shall begin on November 1 and end on October 31 of the following year].~~

- 1     (3) For the purposes of subsection (1), the executive director may accept as credit  
 2     towards the completion of the continuing professional education requirements in  
 3     this state, the completion of continuing professional education requirements in  
 4     any other state so long as the education has met the requirements set forth in  
 5     subsections (1) and (2) of this section~~[The completion of the educational~~  
 6     ~~requirement in the case of initial registrations under KRS 286.8-255(2)(c) shall~~  
 7     ~~satisfy the continuing education requirement of this section for the first renewal~~  
 8     ~~registration.~~
- 9     ~~(4) Fifty (50) minutes of classroom contact shall equal one (1) hour of continuing~~  
 10     ~~professional education. Each continuing professional education course, other than~~  
 11     ~~classroom hours, shall equal the number of hours approved and designated by the~~  
 12     ~~Office of Financial Institutions for that course. Course sponsors shall maintain~~  
 13     ~~records of attendees for two (2) years after completion of the course.~~
- 14     ~~(5) Every person required to be registered under this subtitle shall furnish to the~~  
 15     ~~executive director written certification as to each continuing professional education~~  
 16     ~~course satisfactorily completed. The certification shall be signed by the teacher or~~  
 17     ~~sponsoring organization of the course showing the date the course was completed,~~  
 18     ~~the number of hours of the course, and the number of hours attended. The~~  
 19     ~~certification shall be on a form prescribed by the executive director.~~
- 20     ~~(6) Beginning July 1, 2009, the executive director shall approve professional education~~  
 21     ~~courses to meet the continuing professional education requirement of this subtitle.~~  
 22     ~~The executive director may assess a fee of fifty dollars (\$50) for each professional~~  
 23     ~~education course that is reviewed for approval. Only courses approved by the~~  
 24     ~~executive director shall qualify to satisfy the continuing professional education~~  
 25     ~~requirement of this section. Professional education courses shall be reviewed by the~~  
 26     ~~executive director on a biennial basis from the date of the approval to determine~~  
 27     ~~whether the course continues to satisfy the professional education requirements of~~

~~this section. The executive director may withdraw approval of any education course at any time where it is shown to the satisfaction of the executive director that the education course no longer meets the requirements of this section.~~

~~(7) (a) Beginning July 1, 2009, the executive director shall approve education providers who are qualified to teach professional education necessary to meet the continuing professional education requirement of this subtitle. Any education provider approved by the executive director shall not be required to register or seek approval of his or her qualifications with any other state agency. Approved education providers shall meet the standards established in administrative regulation and may include without limitation:~~

- ~~1. Trade associations;~~
- ~~2. For profit education providers;~~
- ~~3. Not for profit education providers;~~
- ~~4. Employers conducting in-house training programs; and~~
- ~~5. Government agencies and government associations.~~

~~(b) An individual teaching any approved continuing professional education course shall qualify for the same number of hours of continuing professional education as would be granted to a mortgage loan broker or mortgage loan originator taking and satisfactorily completing the course.~~

~~(c) The executive director may withdraw approval of any education provider at any time where it is shown to the satisfaction of the executive director that the education provider no longer qualifies to teach or provide continuing professional education required under this section].~~

~~(4) [(8)]~~ For good cause shown, the executive director may grant an extension during which the continuing education requirement of this section may be completed, but the extension may not exceed thirty (30) days. What constitutes good cause for the extension of time rests within the discretion of the executive director.

1 ~~(5)~~~~(9)~~ The certificate of registration of any mortgage loan originator or mortgage  
 2 loan processor that fails to comply with the continuing professional education  
 3 requirements of this section and who has not been granted an extension of time to  
 4 comply in accordance with subsection ~~(4)~~~~(8)~~ of this section shall expire and shall  
 5 ~~be~~ promptly ***be deemed*** surrendered to the executive director without demand.

6 ➔ Section 20. KRS 286.8-285 is amended to read as follows:

7 (1) ~~(a)~~ In addition to other duties imposed upon the executive director in this subtitle,  
 8 the executive director shall be authorized to participate in the establishment  
 9 and implementation of ***the Nationwide Mortgage Licensing System and***  
 10 ***Registry and to implement and comply with the minimum requirements set***  
 11 ***forth in the S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and***  
 12 ***amendments thereto***~~[a multistate automated licensing system for mortgage~~  
 13 ~~loan brokers, mortgage loan companies, loan officers, or originators].~~

14 ~~(b)~~~~(a)~~ For such purpose, the executive director is authorized to waive or  
 15 modify, in whole or in part, by rule or by order, any or all of the requirements  
 16 of this subtitle and to establish new requirements as reasonably necessary to  
 17 carry out the purpose of this section.

18 ~~(c)~~~~(b)~~ ***The executive director shall have authority to establish relationships***  
 19 ***or contracts with other governmental agencies, the Nationwide Mortgage***  
 20 ***Licensing System and Registry, or entities affiliated with the system that are***  
 21 ***necessary to carry out the purpose of this section***~~[These new requirements~~  
 22 ~~shall include the fingerprinting of applicants and the submission of those~~  
 23 ~~fingerprints, along with any fee required to perform the criminal background~~  
 24 ~~record review, to the Federal Bureau of Investigation and the Department of~~  
 25 ~~Kentucky State Police or an equivalent state department law enforcement~~  
 26 ~~agency for state and national criminal background record review of the~~  
 27 ~~applicant].~~

(d) The executive director may establish interim procedures to promote and establish an orderly and efficient transition for the registration, review, and acceptance of new applications. The executive director may also establish interim procedures and expedited review and registration procedures for previously registered individuals.

(e) The executive director may use the Nationwide Mortgage Licensing System and Registry as an agent for receiving, requesting, and distributing information to and from any source so directed by the executive director.

(2) The executive director shall establish a process whereby licensees may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the executive director~~[not be authorized under this section to require a person or individual who is exempt under KRS 286.8-020(1)(a) or (g) to submit information or participate in the uniform multistate licensing program].~~

(3) The executive director shall annually request audited financial reports, including inquiring as to the budget and fees collected, both proposed and actual, from the Nationwide Mortgage Licensing System and Registry.

(4) The executive director shall annually request any nonconfidential protocols or reports for the security and safeguarding of personal information maintained by the Nationwide Mortgage Licensing System and Registry, including the following:

(a) Inquiring as to whether the system has implemented and complied with the data security guidelines set forth in the Gramm-Leach-Bliley Act, 15 U.S.C. sec. 6801;

(b) Inquiring as to the results of any nonconfidential periodic data protection audits that the system may conduct; and

(c) Inquiring as to whether any security breaches have occurred resulting in the substantial likelihood that personal information may be misused or

1 stolen.

2 (5) The executive director shall annually request from the Nationwide Mortgage  
 3 Licensing System and Registry the following statistical information, if available,  
 4 relating to the examinations taken by applicants seeking registration as a loan  
 5 originator in Kentucky during the preceding calendar year:

6 (a) The total number of tested individuals, along with any relevant  
 7 demographic information available such as race, ethnicity, or gender;

8 (b) The total number of individuals who received a passing score on the  
 9 examination, along with any relevant demographic information available  
 10 such as race, ethnicity, or gender;

11 (c) The total number of individuals who did not receive a passing score on the  
 12 examination, along with any relevant demographic information available  
 13 such as race, ethnicity, or gender; and

14 (d) All mean, average, or scaled scoring data.

15 (6) When requested by the General Assembly, the executive director shall review and  
 16 report to the General Assembly the content of any information received from the  
 17 Nationwide Mortgage Licensing System and Registry pursuant to subsections (3),  
 18 (4), or (5) of this section.

19 (7) Notwithstanding any provision to the contrary in this subtitle or in KRS Chapter  
 20 61, the executive director shall regularly report violations of this subtitle, as well  
 21 as enforcement actions and other relevant information, to the Nationwide  
 22 Mortgage Licensing System and Registry.

23 ➔SECTION 21. A NEW SECTION OF SUBTITLE 8 OF KRS CHAPTER 286  
 24 IS CREATED TO READ AS FOLLOWS:

25 Every mortgage loan company and mortgage loan broker shall exercise proper  
 26 supervision and control over the operations, employees, and affairs of its company. A  
 27 mortgage loan company or mortgage loan broker shall not directly utilize the services

of a mortgage loan originator engaging in any of the activities set forth in subsection (21)(a) of Section 1 of this Act, unless that mortgage loan originator is under the supervision and control of that company as an employee. Notwithstanding any provision to the contrary, nothing in this section shall prohibit mortgage loan companies from utilizing the services of a mortgage loan broker and its employees.

→ SECTION 22. A NEW SECTION OF SUBTITLE 8 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

If any provision of this subtitle or its application to any person or circumstance is held invalid, the remainder of the subtitle and the application of the provision to other persons or circumstances shall not be affected.

→ Section 23. KRS 286.2-100 is amended to read as follows:

As used in KRS 286.2-100 to ~~286.2-680~~[286.2-105], unless the context requires otherwise:

(1) "Financial institution" means a state or national bank, bank holding company, trust company, savings and loan association, savings and loan association holding company,~~{or}~~ credit union, or wholly owned subsidiary thereof;

(2) "Interested person" means the surviving spouse of the lessee, an adult child of the lessee, a parent of the lessee, a person named as the personal representative in a copy of a purported will produced by such person, a person designated by the lessee in writing acceptable to the lessor that is filed with the lessor before death of the lessee, or a person named in a court order to examine the contents of a safe deposit box for a purpose listed in KRS 286.2-105(1);

(3) "Lessee" means a person who contracts with a lessor for the use of a safe deposit box;

(4) "Lessor" means a financial institution or safe deposit company that rents safe deposit facilities; and

(5) "Safe deposit box" means a safe deposit box, vault, or other safe deposit receptacle



maintained by a lessor that may be used for the safekeeping and storage of property and documents.

➔ Section 24. KRS 286.2-670 is amended to read as follows:

(1) Except as provided in subsection ~~(2)~~~~(10)~~ of this section, a~~any~~ foreign financial~~lending~~ institution~~, including but not limited to any foreign banking corporation, any foreign corporation all of the capital stock of which is owned by one or more foreign banking corporations, any foreign savings and loan association, any foreign insurance company, or any foreign corporation or association authorized by its charter to invest in loans secured by real property and organized under the laws of any other state,]~~ shall not be considered to be doing, transacting, or carrying on business in this state solely by reason of engaging in any or all of the following activities, either on its own behalf or as a trustee of a pension plan, employee's profit-sharing or retirement plan, or testamentary or inter vivos trust:

(a)~~(1)~~ The lending of money, or the acquisition by purchase, by contract to purchase, by making of advance commitments to purchase, or by assignment to it of loans, including construction loans, or any interest in loans, secured in whole or in part by mortgages, deeds of trust or other forms of security on real or personal property in this state, if such activities are carried on from outside this state by the lending institution or within this state by independent agencies on behalf of said foreign lending institution;

(b)~~(2)~~ The receipt of principal and interest on such loans;

(c)~~(3)~~ The making of physical inspections and appraisals of real or personal property which secures or is proposed to secure any loan by an officer or employee of a foreign lending institution if the officer or employee making any physical inspections and appraisals is not a resident of and does not maintain his place of business in this state;

(d)~~(4)~~ The ownership of any loans and the enforcement of any loans by

1 trustee's sale, judicial process, or deed in lieu of foreclosure, or otherwise;

2 ~~(e)(5)}~~ The modification, renewal, extension, transfer, or sale of loans or the  
 3 acceptance of additional or substitute security therefor or the full or partial  
 4 release of the security therefor or the acceptance of substitute or additional  
 5 obligors thereon if the activities are carried on from outside this state by the  
 6 lending institution or carried on within this state by independent agencies;

7 ~~(f)(6)}~~ The maintaining and defending of any action or suits relating to loans,  
 8 mortgages, deeds of trust, security instruments or related agreements or  
 9 activities referred to herein or incidental thereto;

10 ~~(g)(7)}~~ The engaging, by contractual arrangement, of a corporation, firm or  
 11 association, qualified to do business in this state, which is not a subsidiary or  
 12 parent of the lending institution or which is not under common management  
 13 with the lending institution, to make collections and to service loans in any  
 14 manner whatsoever, including the payment of ground rents, taxes,  
 15 assessments, insurance and the like and the making, on behalf of the lending  
 16 institution, of physical inspections and appraisals of real or personal property  
 17 securing any loans or property which is proposed to secure any loans, and the  
 18 performance of any such engagement;

19 ~~(h)(8)}~~ The acquisition of title to the real or personal property covered by any  
 20 mortgages, deeds of trust, or other security instrument, by trustees, pledgees,  
 21 or judicial sales, or by deed in lieu of foreclosure or for the purpose of  
 22 transferring title to any federal agency or instrumentality as the insurer or  
 23 guarantor of any loans, the maintenance or defense of any action or suit  
 24 relating to the possession of the property, and the retention of title to any real  
 25 or personal property as acquired pending the orderly sale or other disposition  
 26 thereof; or

27 ~~(i)(9)}~~ The maintenance of bank accounts in banks, authorized or licensed to do

1 and transact a banking business in this state.

2 ~~(2)(10)~~ The provisions of this section shall be inapplicable in determining whether a  
3 financial institution is regularly engaged in business in this Commonwealth within  
4 the meaning of that phrase as used in KRS 136.500 to 136.575.

5 ➔Section 25. KRS 286.2-680 is amended to read as follows:

6 No foreign ~~financial~~~~[lending]~~ institution solely by reason of engaging in any one (1) or  
7 more of the activities set forth in KRS 286.2-670 shall be required to qualify to do  
8 business in this Commonwealth. Notwithstanding the foregoing, a financial institution, as  
9 defined in KRS 136.500, is subject to taxation within this Commonwealth if it meets the  
10 nexus requirement of KRS 136.520.

11 ➔SECTION 26. A NEW SECTION OF SUBTITLE 2 OF KRS CHAPTER 286  
12 IS CREATED TO READ AS FOLLOWS:

13 *Unless otherwise specifically provided for in this subtitle, the executive director may*  
14 *levy a civil penalty against any person who violates any provision of this subtitle, any*  
15 *administrative regulation promulgated under this subtitle, or any order issued by the*  
16 *executive director under this subtitle. The civil penalty shall be not less than one*  
17 *thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) per violation,*  
18 *plus the state's costs and expenses for the examination, investigation, and prosecution*  
19 *of the matter, including reasonable attorney's fees and court costs.*

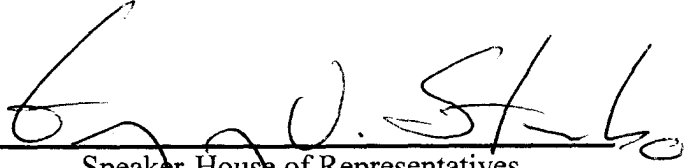
20 ➔Section 27. KRS 286.8-012 is amended to read as follows:

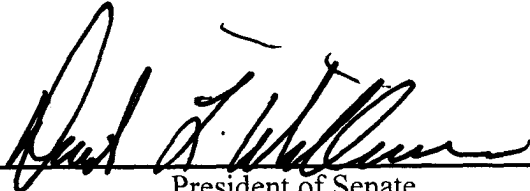
21 Any party aggrieved by any decision of the executive director under the provisions of  
22 KRS 286.8-020 ~~or~~~~;~~ 286.8-100 ~~or 286.8-200,~~ may request an administrative hearing  
23 which shall be conducted in accordance with KRS Chapter 13B.

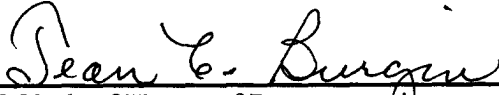
24 ➔Section 28. The following KRS sections are repealed:

25 286.8-038 Administrative regulations establishing standards for license testing,  
26 prelicensure education, and continuing education requirements for mortgage  
27 professionals.

- 1 286.8-040 Knowledge components of examinations.
- 2 286.8-042 Conduct of examinations.
- 3 286.8-200 Order of suspension or denial of license -- Notice -- Hearing.
- 4 286.8-230 Deadline for initial compliance.

  
\_\_\_\_\_  
Speaker-House of Representatives

  
\_\_\_\_\_  
President of Senate

Attest:   
\_\_\_\_\_  
Chief Clerk of House of Representatives

Approved   
\_\_\_\_\_  
Governor

Date March 27, 2009